

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:RFP:CHI:1:POSTF-101125-02
PPDavis

date: February 4, 2002

to: [REDACTED], Team Coordinator

from: Pamela V. Gibson, LMSB Associate Area Counsel, Area 3

subject:

[REDACTED]
TIN [REDACTED]
Taxable Years [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
Earliest SOL: [REDACTED]

This memorandum responds to your request for assistance dated November 30, 2001. This memorandum should not be cited as precedent. The issues herein do not appear to be within the scope of the responsibility of any Industry Counsel.

QUESTIONS PRESENTED

1. Does a Closing Agreement between the Commissioner of Internal Revenue and a corporate taxpayer that makes adjustments to partnership items, which adjustments continue into a subsequent audit cycle, shield those items from the TEFRA procedures requirements?

2. Does the additional language regarding unified audit procedures that is included in the Corporation's Consent to Extend the Time to Assess Tax, Form 872, extend the statute of limitations for the partnerships in which the corporation is a partner?

FACTS

Taxpayer, [REDACTED] ("[REDACTED]"), TIN [REDACTED], entered into a Closing Agreement on [REDACTED] with the Commissioner of Internal Revenue with respect to the basis and amortization rate of intangible assets acquired by the taxpayer through the purchase of all of the partnership interests of [REDACTED]. The Closing Agreement covered the years [REDACTED] through [REDACTED]. Currently the [REDACTED] through [REDACTED] cycle is under examination. The statute of limitations for this matter expires on [REDACTED].

You are in the process of conducting the audit of the U.S. Income Tax Return (Form 1120) of [REDACTED], TIN [REDACTED], for the taxable years [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Pursuant to a previously executed Consent To Extend Time to Assess Tax (Form 872), the period of limitations for the taxable year ended December 31, [REDACTED] will expire on [REDACTED]. You have requested advice concerning the necessity of following the TEFRA audit and adjustment procedures for making adjustments to the Taxpayer's Form 1120 stemming from the Closing Agreement referenced above. Also, you have requested clarification of the meaning and implications of paragraph 3 of the executed Form 872 dated [REDACTED], which reads as follows:

With regard to interests held in entities that are subject to the TEFRA unified audit and litigation procedures, and without otherwise limiting the applicability of this agreement, this agreement also extends the period of limitations for assessing any tax (including additions to tax and interest) attributable to any partnership items, affected items, computational adjustments, and partnership items converted to nonpartnership items. This agreement extends the period for filing a request for administrative adjustment and the period filing a petition regarding such a request. For partnership items that have converted to nonpartnership items, this agreement extends the period for filing a suit for refund or credit. In accordance with paragraph (1) above, an assessment attributable to a partnership shall not terminate this agreement for other partnerships or for items not attributable to a partnership. Similarly, an assessment not attributable to a partnership shall not terminate this agreement for items attributable to a partnership.

CONCLUSION

1. A Closing Agreement between the Commissioner of Internal Revenue and a taxpayer with partnership interests converts partnership items to nonpartnership items and shields those items from the TEFRA procedural requirements.

Internal Revenue Code § 6231(b)(1)(C) states that a partnership item becomes a nonpartnership item as of the date the "Secretary enters into a settlement agreement with the partner with respect to such items." The Tax Court has held that "... once substantive partnership level determinations have been made, the congressional objective in enacting TEFRA has been accomplished. Consequently, the provisions mandating separation of partner and partnership level proceedings can be relaxed." Harris v. Commissioner, 99 T.C. 121, 126 (1992). In this case, the taxpayer and the Commissioner have resolved substantive partnership items by means of the Closing Agreement dated [REDACTED]. Under I.R.C. § 6231(b)(1)(C) these items have been converted to nonpartnership items because they are covered in a closing

agreement and the agent may make the appropriate adjustments without adhering to the TEFRA procedures.

2. Paragraph 3 of the Consent to Extend the Time to Assess Tax, Form 872, extends the statute of limitations period with respect to TEFRA partnership items for this particular corporate taxpayer, its subsidiaries and the Tax Matters Partner, with respect to adjustments arising out of any partnerships in which this corporation has an interest. Consequently, it is not necessary to obtain consents from the corporation for each partnership in which it has an interest. In fact, one of the reasons for inserting this paragraph in the Form 872 is to prevent such a duplication of effort. Please note, however, that the language of paragraph 3 does not extend the statute of limitations with respect to any unrelated partners who may have interests in the same partnerships and failure to obtain a consent to extend the statute at the partnership level will result in the expiration of the statute of limitations with respect to those unrelated partners.

In accordance with LMSB procedures, we are submitting this advisory opinion for review by our National Office and anticipate a response from the National Office in approximately ten days. As you know, the response can supplement, modify and/or reject the advice contained herein. Accordingly, please take no action on the advice contained herein until such time as we notify you as to whether or not there are any exceptions or modifications to the advice contained herein as a result of the response received from the National Office.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions concerning this matter, please call attorney Patricia Pierce Davis at (312) 886-9225 ext. 336.

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Associate Area Counsel
(Large and Mid-Size Business)

By: _____
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Attorney